Uda Holdings Bhd v Faridah Mansor

HIGH COURT (KUALA LUMPUR) — SUMMONS NO S2(S1)–F78 OF 1984
KAMALANATHAN RATNAM J
30 APRIL 2001

Civil Procedure *— Stay of execution of judgment — Pending appeal — Delivery of vacant possession — Delay in pursuing suit — Hardship on defendant if vacant possession ordered — Whether justice would prevail if status quo maintained*

The plaintiff was the owner of a shop house, and in 1976 it gave vacant possession of the said premise to the defendant. In anticipation of the execution of a sale and purchase agreement, the defendant paid to the plaintiff a sum of RM15,500. The trial judge decided that there was no legally binding contract between the parties and ordered, inter alia, that the defendant and everyone who claims an interest over the defendant to deliver vacant possession of the said shop house to the plaintiff (para (a)). The defendant has appealed against the said decision, and filed this application (encl 55) for a stay of execution of para (a) only of the said order. She averred that if vacant possession is given as ordered, it would cause her tremendous hardship.

Held, staying the execution of para (a):
The suit was filed in 1984 and the plaintiff took no effort to ensure a speedy trial. Instead, the plaintiff was content to let the case languish in court for almost 16 years before it was heard. On this ground alone, the court agreed with the defendant that great hardship would befall her if at this stage vacant possession was given. Whilst the judgment stood, it was the view of the court that greater justice would prevail if parties maintain the status quo until the Court of Appeal hears this appeal (see p 85C–D).

[Bahasa Malaysia summary

Plaintif adalah pemilik satu rumah kedai, dan dalam tahun 1976 telah memberikan milikan kosong permis tersebut kepada defendan. Dengan menjangkakan penyempurnaan satu perjanjian jual beli, defendan telah membayar kepada plaintif sejumlah RM15,500. Hakim perbicaraan telah memutuskan bahawa tiada kontrak mengikat yang sah antara kedua-dua pihak dan memerintahkan, antara lain, agar defendan dan semua yang menuntut faedah ke atas defendan untuk mengembalikan milikan kosong rumah kedai tersebut kepada plaintif (perenggan (a)). Defendan telah membuat rayuan terhadap keputusan tersebut, dan memfailkan permohonan ini (lampiran 55) untuk satu penggantungan penyempurnaan perenggan (a) sahaja terhadap perintah tersebut. Beliau menegaskan bahawa jika milikan kosong diberikan seperti dipohon, ia akan menyebabkan kesusahan yang amat kepada beliau.

Diputuskan, mengekalkan penyempurnaan perenggan (a) tersebut: Guaman difailkan dalam tahun 1984 dan plaintif tidak membuat apa-apa usaha untuk memastikan satu perbicaraan yang cepat. Sebaliknya, plaintif berpuas hati dengan membiarkan kes ini di mahkamah hampir 16 tahun sebelum ia didengar. Atas alasan ini sahaja, mahkamah lebih bersetuju dengan defendan bahawa kesusahan yang amat akan menimpa beliau jika pada peringkat ini milikan kosong diberikan. Meskipun penghakiman dikekalkan, ia adalah pendapat mahkamah bahawa keadilan boleh lebih dikekalkan jika kedua-dua pihak mengekalkan status quo sehingga Mahkamah Rayuan mendengar rayuan ini (lihat ms 85C–D).]

Notes

For cases on stay of execution of judgment generally, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4252–4271.

Cases referred to

Mohamed Mustafa v Kandasami (No 2) [1979] 2 MLJ 126 (refd)

Wan Mohd Zam bin Wan Embong (*Prasad Abraham & Assoc*) for the applicant/defendant.

Nooraini bte Yusoff (*Abu Seman & Co*) for the respondent/plaintiff.

Kamalanathan Ratnam J:

Facts

On 4 April 2000, Mohd Saari Yusoff J (as he then was) after hearing submissions from both parties, made the following orders:

(a) Defendan dan kesemua mereka yang menuntut hak daripada defendan diarahkan untuk menyerahkan milikan kosong rumah kedai yang dikenali sebagai No 27, Jalan SS15/5A, Subang Jaya, Selangor Darul Ehsan kepada plaintif.

(b) Bahawa tuntutan plaintif untuk ganti-rugi 'mesne-profit' adalah dibenarkan dan pengiraan ganti-rugi tersebut adalah bermula daripada 1 Januari 1977 sehingga Disember 1997, di mana gantirugi tersebut akan ditaksirkan oleh Penolong Kanan Pendaftar.

(c) Kos tindakan ini dibayar oleh defendan kepada plaintif.

(d) Tuntutan balas defendan ditolak dengan kos.

The defendant has since appealed to the Court of Appeal against the said decision.

Findings of the court

The defendant filed this application (encl 55) for a stay of execution of para (a) only of the said order, until the hearing and disposal of the appeal by the Court of Appeal. Up to the date of the filing of this application on

9 August 2000, the plaintiff had not proceeded to extract the fair order. The defendant averred that if vacant possession is given as ordered, it would cause tremendous hardship to her. The plaintiff is the owner of a shop house No 27 Jalan SS15/5A, Subang Jaya, Selangor, ('the said premise') (and the subject of the order) situated on land held under HS (D) 3442 Lot 4008 Mukim Damansara, Daerah Petaling, Selangor. On 26 November 1976, the plaintiff gave vacant possession of the said premise to the defendant. The defendant has been in possession of the said premise ever since. In anticipation of a sale and purchase agreement to be executed between the parties, the defendant paid to the plaintiff a sum of RM15,500. This payment is not in dispute. My learned brother decided that there is no legally binding contract between the plaintiff and the defendant over the said premise. The defendant has alleged that she has a good prospect of success. She has also pointed out that the shop lot is her family's main source of income as she and her husband are living off the rental derived from the shop lot. This matter arose out of a dispute that occurred in 1976. The suit was filed in 1984 and the plaintiff took no effort to ensure a speedy trial. Instead, the plaintiff was content to let the case languish in court for almost 16 years before it was heard. On this ground alone, I tended to agree with the defendant that great hardship would befall her if at this stage vacant possession is given. Whilst the judgment stands, it is my view that greater justice would prevail if parties maintain the status quo until the Court of Appeal hears this appeal. I am fortified in holding this view by relying upon the Federal Court decision in *Mohamed Mustafa v Kandasami (No 2)* [1979] 2 MLJ 126. This case too related to an application to grant conditional leave to appeal to the Privy Council against the order of the then Federal Court and for a stay of execution to be granted until the appeal was heard and disposed of. Having heard the arguments and since the value of the property involved was over RM25,000, the court agreed to grant leave. It then held that stay of execution ought to be granted to maintain the status quo.

In the case before me, there is no need for leave as the defendant has already filed her appeal to the Court of Appeal. It is therefore only proper that the status quo be maintained in this case until the hearing and disposal of the appeal to the Court of Appeal. I therefore granted an order to stay execution of para (a) only of the order of the court dated 4 April 2000 until the hearing and disposal of the appeal. In any case, in the exercise of my discretion I awarded the plaintiff the costs of this application which I fixed at RM500.

Order to stay execution of para (a) granted.

Reported by Wong Ee Lynn